



6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R03-OAR-2017-0337; FRL-9977-88-Region 3]

#### Approval and Promulgation of Air Quality Implementation Plans; Virginia; Interstate Transport Requirements for the 2012 Fine Particulate Matter Standard

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Virginia (the Commonwealth or Virginia). This revision pertains to the infrastructure requirement for interstate transport of pollution with respect to the 2012 fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS). EPA is approving this revision in accordance with the requirements of the Clean Air Act (CAA).

**DATES:** Written comments must be received on or before **[insert date 30 days after date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R03-OAR-2017-0337 at <https://www.regulations.gov>, or via email to [spielberger.susan@epa.gov](mailto:spielberger.susan@epa.gov). For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio,

video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the “For Further Information Contact” section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Joseph Schulingkamp, (215) 814-2021, or by e-mail at [schulingkamp.joseph@epa.gov](mailto:schulingkamp.joseph@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

On June 16, 2015, Virginia, through the Department of Environmental Quality (VADEQ), submitted a SIP revision to address the elements of CAA section 110(a)(2) with the exception of section 110(a)(2)(D)(i). EPA approved that SIP revision on June 16, 2016. *See* 81 FR 39210. EPA’s previous approval on that June 16, 2015 submittal is not at issue in this rulemaking action and EPA will not be taking comment on the previous approval. On May 16, 2017, Virginia, through VADEQ, submitted a SIP revision addressing the infrastructure requirements under section 110(a)(2)(D)(i) of the CAA for the 2012 PM<sub>2.5</sub> NAAQS.

### **I. Background**

#### **A. General**

Particle pollution is a complex mixture of extremely small particles and liquid droplets in the air. When inhaled, these particles can reach the deepest regions of the lungs. Exposure to particle

pollution is linked to a variety of significant health problems. Particle pollution also is the main cause of visibility impairment in the nation's cities and national parks. PM<sub>2.5</sub> can be emitted directly into the atmosphere, or it can form from chemical reactions of precursor gases including sulfur dioxide (SO<sub>2</sub>), nitrogen dioxide (NO<sub>2</sub>), certain volatile organic compounds (VOC), and ammonia. On January 15, 2013, EPA revised the level of the health based (primary) annual PM<sub>2.5</sub> standard to 12 micrograms per meter cubed (µg/m<sup>3</sup>). *See* 78 FR 3086.

## **B. EPA's Infrastructure Requirements**

Pursuant to section 110(a)(1) of the CAA, states are required to submit a SIP revision to address the applicable requirements of section 110(a)(2) within three years after promulgation of a new or revised NAAQS or within such shorter period as EPA may prescribe. Section 110(a)(2) requires states to address basic SIP elements to assure attainment and maintenance of the NAAQS – such as requirements for monitoring, basic program requirements, and legal authority. Section 110(a) imposes the obligation upon states to make a SIP submission to EPA for a new or revised NAAQS, but the contents of that submission may vary depending upon the facts and circumstances of each NAAQS and what is in each state's existing SIP. In particular, the data and analytical tools available at the time the state develops and submits the SIP revision for a new or revised NAAQS affect the content of the submission. The content of such SIP submission may also vary depending upon what provisions the state's existing SIP already contains.

Specifically, section 110(a)(1) provides the procedural and timing requirements for SIP submissions. Section 110(a)(2) lists specific elements that states must meet for infrastructure SIP requirements related to a newly established or revised NAAQS such as requirements for

monitoring, basic program requirements, and legal authority that are designed to assure attainment and maintenance of the NAAQS.

### **C. Interstate Pollution Transport Requirements**

Section 110(a)(2)(D)(i)(I) of the CAA requires a state's SIP to address any emissions activity in one state that contributes significantly to nonattainment, or interferes with maintenance, of the NAAQS in any downwind state. The EPA sometimes refers to these requirements as prong 1 (significant contribution to nonattainment) and prong 2 (interference with maintenance), or jointly as the "good neighbor" provision of the CAA. On March 17, 2016, EPA issued a memorandum providing information on the development and review of SIPs that address CAA section 110(a)(2)(D)(i) for the 2012 PM<sub>2.5</sub> NAAQS (2016 PM<sub>2.5</sub> Memorandum).<sup>1</sup> Further information can be found in the Technical Support Document (TSD) for this rulemaking action, which is available online at [www.regulations.gov](http://www.regulations.gov), Docket number EPA-R03-OAR-2017-0337.

## **II. Summary of SIP Revisions and EPA Analysis**

Virginia's May 16, 2017 SIP submittal includes a summary of annual emissions of oxides of nitrogen (NO<sub>x</sub>) and SO<sub>2</sub>, both of which are precursors of PM<sub>2.5</sub>. The emissions summary shows that emissions from Virginia sources have been steadily decreasing for sources that could potentially contribute with respect to the 2012 PM<sub>2.5</sub> NAAQS to nonattainment in, or interfere with maintenance of, any other state. The submittal also included currently available air quality monitoring data for PM<sub>2.5</sub>, and its precursors SO<sub>2</sub> and NO<sub>2</sub>, which Virginia alleged show that PM<sub>2.5</sub> levels continue to be below the 2012 PM<sub>2.5</sub> NAAQS in Virginia.

---

<sup>1</sup> "Information on the Interstate Transport "Good Neighbor" Provision for the 2012 Fine Particulate Matter National Ambient Air Quality Standards under Clean Air Act Section 110(a)(2)(D)(i)(I)," Memorandum from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards (March 17, 2016). A copy is included in the docket for this rulemaking action.

Virginia also discussed EPA's 2016 PM<sub>2.5</sub> Memorandum and the fact that EPA's analysis showed that only one monitor in the eastern United States had projected PM<sub>2.5</sub> data above the 12.0 µg/m<sup>3</sup> NAAQS value (Allegheny County, PA). Virginia also discussed the direction of prevailing winds throughout Virginia and how, apart from short-term weather variations, Virginia's emissions would have a negligible influence on Allegheny County's attainment status. Virginia also points to EPA's response to comments on the 2012 PM<sub>2.5</sub> Designations, in which EPA discusses the factors contributing to the Allegheny County area's nonattainment designation.<sup>2</sup>

Additionally, Virginia described in its submittal several existing SIP-approved measures and other federally enforceable source-specific measures, pursuant to permitting requirements under the CAA, that apply to sources of PM<sub>2.5</sub> and its precursors within Virginia. Virginia alleges with these measures, emissions reductions, ambient monitored PM<sub>2.5</sub> data, and meteorological data, the Commonwealth does not significantly contribute to, nor interfere with the maintenance of, another state for the 2012 PM<sub>2.5</sub> NAAQS. A detailed summary of Virginia's submittal and EPA's review and rationale for approval of this SIP revision as meeting CAA section 110(a)(2)(D)(i)(I) for the 2012 PM<sub>2.5</sub> NAAQS may be found in the TSD for this rulemaking action, which is available online at [www.regulations.gov](http://www.regulations.gov), Docket number EPA-R03-OAR-2017-0337.

EPA used the information in the 2016 PM<sub>2.5</sub> Memorandum and additional information for the evaluation and came to the same conclusion as Virginia. As discussed in greater detail in the

---

<sup>2</sup> "Response to Significant Comments on the State and Tribal Designation Recommendations for the 2012 Annual PM<sub>2.5</sub> National Ambient Air Quality Standard (NAAQS)" December 17, 2014. See Docket Number: EPA-HQ-OAR-2012-0918-0337, page 10.

TSD, EPA identified the potential downwind nonattainment and maintenance receptors identified in the 2016 PM<sub>2.5</sub> Memorandum, and then evaluated them to determine if Virginia's emissions could potentially contribute to nonattainment and maintenance problems in 2021, the attainment year for moderate PM<sub>2.5</sub> nonattainment areas. Specifically, the analysis identified the following areas as potential nonattainment and maintenance receptors: (i) 17 potential receptors in California; (ii) one potential receptor in Shoshone County, Idaho; (iii) one potential receptor in Allegheny County, Pennsylvania; (iv) data gaps exist for the monitors in four counties in Florida; and (v) data gaps exist for all monitors in Illinois. For the 17 receptors in California and one potential receptor in Idaho, based on EPA's evaluation of distance and wind direction, EPA proposes to conclude that Virginia's emissions do not significantly impact those receptors. For the potential receptor in Allegheny County, EPA expects the air quality affecting that monitor to improve to the point where the monitor will not be a nonattainment or maintenance receptor by 2021 and is therefore unlikely to be a receptor for purposes of interstate transport. For the four counties in Florida and the monitors in Illinois with data gaps, EPA initially treats those receptors as potential nonattainment or maintenance receptors. For the Florida receptors, it is unlikely that they will be nonattainment or maintenance receptors in 2021 and in any event, modeling from the Cross-State Air Pollution Rule (CSAPR) indicates that Virginia's emissions do not contribute to them. For the monitors in Illinois, the most recent air quality data (from 2015 and 2016) indicates that all monitors are likely attaining the PM<sub>2.5</sub> NAAQs and are therefore unlikely to be nonattainment or maintenance concerns in 2021. Therefore, EPA proposes to conclude that Virginia emissions will not contribute to those monitors. For these reasons, EPA is proposing to find that Virginia's existing SIP provisions as identified in the May 16, 2017 SIP submittal are adequate to prevent its emission sources from significantly

contributing to nonattainment or interfering with maintenance in another state with respect to the 2012 PM<sub>2.5</sub> NAAQS.

### **III. Proposed Action**

EPA is proposing to approve the May 16, 2017 Virginia SIP revision addressing the interstate transport requirements for the 2012 PM<sub>2.5</sub> NAAQS because the submittal adequately addresses section 110(a)(2)(D)(i)(I) of the CAA. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

### **IV. General Information Pertaining to SIP Submittals from the Commonwealth of Virginia**

In 1995, Virginia adopted legislation that provides, subject to certain conditions, for an environmental assessment (audit) “privilege” for voluntary compliance evaluations performed by a regulated entity. The legislation further addresses the relative burden of proof for parties either asserting the privilege or seeking disclosure of documents for which the privilege is claimed.

Virginia's legislation also provides, subject to certain conditions, for a penalty waiver for violations of environmental laws when a regulated entity discovers such violations pursuant to a voluntary compliance evaluation and voluntarily discloses such violations to the Commonwealth and takes prompt and appropriate measures to remedy the violations. Virginia's Voluntary Environmental Assessment Privilege Law, Va. Code Sec. 10.1-1198, provides a privilege that protects from disclosure documents and information about the content of those documents that are the product of a voluntary environmental assessment. The Privilege Law does not extend to documents or information that: (1) Are generated or developed before the commencement of a voluntary environmental assessment; (2) are prepared independently of the assessment process; (3) demonstrate a clear, imminent, and substantial danger to the public health or environment; or

(4) are required by law.

On January 12, 1998, the Commonwealth of Virginia Office of the Attorney General provided a legal opinion that states that the Privilege law, Va. Code Sec. 10.1-1198, precludes granting a privilege to documents and information “required by law,” including documents and information “required by federal law to maintain program delegation, authorization or approval,” since Virginia must “enforce federally authorized environmental programs in a manner that is no less stringent than their federal counterparts....” The opinion concludes that “[r]egarding § 10.1-1198, therefore, documents or other information needed for civil or criminal enforcement under one of these programs could not be privileged because such documents and information are essential to pursuing enforcement in a manner required by federal law to maintain program delegation, authorization or approval.”

Virginia’s Immunity law, Va. Code Sec. 10.1-1199, provides that “[t]o the extent consistent with requirements imposed by federal law,” any person making a voluntary disclosure of information to a state agency regarding a violation of an environmental statute, regulation, permit, or administrative order is granted immunity from administrative or civil penalty. The Attorney General’s January 12, 1998 opinion states that the quoted language renders this statute inapplicable to enforcement of any federally authorized programs, since “no immunity could be afforded from administrative, civil, or criminal penalties because granting such immunity would not be consistent with federal law, which is one of the criteria for immunity.”

Therefore, EPA has determined that Virginia’s Privilege and Immunity statutes will not preclude the Commonwealth from enforcing its program consistent with the federal requirements. In any event, because EPA has also determined that a state audit privilege and immunity law can affect



only state enforcement and cannot have any impact on federal enforcement authorities, EPA may at any time invoke its authority under the CAA, including, for example, sections 113, 167, 205, 211 or 213, to enforce the requirements or prohibitions of the state plan, independently of any state enforcement effort. In addition, citizen enforcement under section 304 of the CAA is likewise unaffected by this, or any, state audit privilege or immunity law.

## **V. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866.
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);

- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

This action, proposing approval of Virginia's interstate transport submittal for the 2012 PM<sub>2.5</sub> standard, is not approved to apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter.

**Authority:** 42 U.S.C. 7401 et seq.

Dated: May 1, 2018.

Cosmo Servidio,  
Regional Administrator,  
Region III.

[FR Doc. 2018-09887 Filed: 5/8/2018 8:45 am; Publication Date: 5/9/2018]